

REMARKS

The present invention is a network for communicating with a plurality of radio telephones via a respective communication channels over a carrier, a controller for operation in the network wherein the network communicates with a plurality of radio telephones via respective communication channels over a carrier, a radio telephone for operation with the network which initiates a change in data rate of a channel from a first data rate to a second data rate and a method of communicating with a plurality of radio telephones via respective communication channels over a carrier. An embodiment of the invention includes a network WIO2 or GSM operator network 18 for communicating with a plurality of radio telephones 4 and 7 via respective communication channels over a carrier. The channels can operate at a first or second data rate such that the carrier can transmit a single communication channel operating at the first data rate or two communication channels operating at the second data rate. The network comprises a controller 7 responsive to an initiation of the channel with a second network 18 for initiating a change in the data rate of the transmitted channel from the first data rate to the second data rate. See page 11, lines 6-30, through page 12, lines 1-7, of the original specification.

Claims 23-41 stand rejected under 35 U.S.C. §103 as being unpatentable over WO 99/53700. This ground of rejection is traversed for the following reasons.

Independent claim 23 recites a network for communicating with a plurality of radio telephones; independent claim 30 recites a controller for operation in a network wherein the network communicates with the plurality of

radio telephones; independent claim 37 recites a radio telephone for operation with a network; and independent claim 38 recites a method of communicating with a plurality of radio telephones in which the radio telephones communicate using communication channels wherein the channels operate at a first or second data rate in response to an initiation of a channel with a second network for initiating a change in the data rate of a transmitted channel from the first data rate to the second data rate. The Examiner acknowledges this subject matter is not taught by Balck as, for example, in the discussion of claim 23 in stating:

"BLACK differs from the claim, in that, it does not disclose an initiation of a channel with a second network for initiating a change in the data rate of a transmitted channel."

The Examiner then goes on to reason, for example, on page 3, lines 7-11, that, since Black's gateway mobile switching center (GMSC) 36 interfaces with other controllers and/or other telecommunications networks and since it is well known in the art to initiate a channel connection between two subscribers in two different networks which involves the data rate change from data flow control, it would be obvious to incorporate the initiation of a channel between the subscribers in different networks for initiating a change in the data rate of a transmitted channel when necessary to further improve the system efficiency. This reasoning is based upon impermissible hindsight without the citation of prior art.

It is submitted that the Examiner has not properly documented in the record that "[i]t is also well known in the art to initiate a channel connection between two subscribers and two different networks which involves the data

rate change for data flow control". If the Examiner persists in the stated grounds of rejection, it is requested that he explain on the record where such a conclusion is justified which it is submitted must be done with reliance upon prior art instead of the Examiner's contention of what is old in the art.

Balck operates on the principle of changing a data rate responsive to traffic load exceeding a threshold as described at page 10, line 25 through page 11, line 5, and further as indicated at step 100 in Fig. 5A. Moreover, in one mode of operation Balck operates with an initial higher rate traffic channel followed by monitoring the traffic load in a cell area and if the determined traffic load exceeds the threshold, the higher rate traffic channel over which a dual rate mobile station is communicating is handed over to a lower traffic rate channel available in that cell area. See page 3, lines 3-20. Alternatively, selection of the channel rate for a particular traffic channel at call set up may be based upon the current cell traffic load level so that during periods of high traffic communications involving dual rate mobile stations are established using lower rates to further increase traffic capacity. See column 6, lines 6-9.

Moreover, the Examiner's reasoning that the GMSC acts as a gateway to other networks would not motivate a person of ordinary skill in the art to change data rate in response to initiation of a channel with a second network for initiating a change in data rate as contended by the Examiner to be old and well known. Balck does not disclose any particular interaction between the GMSC and the BSC controller which is used to monitor cell traffic load levels as described on page 9, lines 3-24, with a traffic load detector 50, as illustrated in Fig. 4. Therefore, since the BSC controller performs the

monitoring of traffic level in accordance with Balck and does not interact in any specified manner with the GMSC, there is no means or mechanism which a person of ordinary skill in the art would consider in modifying Balck to arrive at the subject matter of the independent claims pertaining to changing data rate in response to initiation of a channel with a second network.

Balck, in fact, teaches away from changing data rate in response to initiation of a channel with a second network by referring to an intra cell handover from a higher data rate channel to a lower data rate channel as disclosed on page 3, lines 12-13. The suggestion therein of data rate change for intra cell handovers is the antithesis of the claimed changing of data rates upon the initiation of a connection with a second network.

In summary, the Examiner's position with respect to the rejection of the independent claims is fundamentally flawed regarding the Examiner's contention that it is also well known in the art to initiate a channel connection between two subscribers in two different networks which involves the data rate change for a data flow control. Moreover, even if such a change in data rate were known with respect to connection between two different networks, the Examiner has not demonstrated or supplied reasoning why such a change would be done to initiate a channel connection between two subscribers in two different networks to initiate a data rate change for data flow control as contended by the Examiner.

The dependent claims define more specific aspects of the present invention which are neither anticipated nor rendered obvious by Balck.

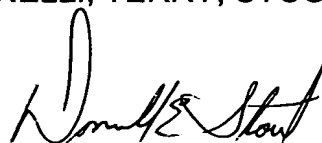
In view of the foregoing amendments and remarks, it is submitted that each of the claims in the application is in condition for allowance.

Accordingly, early allowance thereof is respectfully requested.

To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. §1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (1289.39331X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

A handwritten signature in black ink, appearing to read "Donald E. Stout", is written over a horizontal line.

Donald E. Stout
Registration No. 26,422
(703) 312-6600

Attachments

DES:dlh